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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Billed Party Preference) CC Docket No. 92-77
for 0+ InterLATA Calls)

**REPLY COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits the following reply to comments received in response to the Commission's *Second Further Notice of Proposed Rulemaking* in the above-captioned docket.¹ For the reasons explained below, the record in this docket is an insufficient legal basis for adoption of the Commission's proposed price disclosure requirement. Accordingly, the Commission has two options: either it may adopt benchmarks based at the level proposed by the Industry Coalition,² or it may require disclosure on all 0+ calls, regardless of the rates that OSPs charge. Regardless of which option is chosen, CompTel urges the Commission to adopt an alternative to billed party preference ("BPP") and close the BPP docket, once and for all.

¹ FCC 96-253 (rel. June 6, 1996) (*Second Further Notice*). Initial comments on the *Second Further Notice* were received on July 17, 1996.

² The Coalition's proposed benchmarks are appended to the *Second Further Notice* at Appendix C. See also Industry Coalition ex parte presentation, CC Docket No. 92-77, Mar. 8, 1995. The Industry Coalition consisted of APCC, Bell Atlantic, BellSouth, CompTel, MFS, NYNEX, Teleport, and U S West.

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I. THE COMMISSION MAY NOT ADOPT ITS PRICE DISCLOSURE PROPOSAL

The Commission's price disclosure proposal would require significant modification to OSP systems, and interpose an additional step in the call set-up process. Commenters stressed that OSPs lack the capability to perform real-time rating of 0+ calls,³ and that the proposal likely would force OSPs to default all calls to live operators, thereby doubling operator work time.⁴ This would add at least \$0.35 to \$0.50 to each and every 0+ call.⁵ Moreover, the Commission's proposed benchmarks are a "complex matrix" of over 500 potential call combinations, adding to the cost of compliance for all OSPs.⁶ In short, it is clear that the Commission's price disclosure proposal would be "extremely costly and subject the caller to unnecessary delay and inconvenience."⁷

Significantly, these assessments of price disclosure come from commenters who *support* price disclosure requirements tied to the rates of the "Big Three" interexchange

³ GTE Comments at 6. As CompTel explained, many OSPs ordinarily perform rating in the downstream billing process, well after a call is completed. CompTel Comments at 19.

⁴ Sprint Comments at 4. As CompTel explained in its initial comments, OSP switches cannot automatically give different messages after the bong tone, so either a single generic message would need to be developed, or the OSP would have to default the call to an operator station. CompTel Comments at 19-20 & n.43.

⁵ Sprint Comments at 4 n.3; U S West Comments at 10.

⁶ Sprint Comments at 4; *see* PacTel Comments at 4 (benchmarks are "needlessly complex").

⁷ PacTel Comments at 3; *see* Ameritech Comments at 3 (mandatory price disclosure would "delay or hinder the many thousands of calls that each day are made routinely without any grounds for complaint"); U S West Comments at 4-5 ("consumers will clearly 'pay a price' for price/rate disclosures").

carriers.⁸ Although these commenters clearly find price disclosures burdensome and objectionable, they apparently feel this way only if the price disclosure requirement might apply to them. However, it is just as burdensome for OSPs above the FCC's benchmark to comply with the price disclosure requirement, and just as inconvenient for their callers, as it is for OSPs below the benchmark. In truth, these commenters' self-serving positions belie any claim that price disclosure is about consumer protection or about giving useful information to O+ callers.⁹ Plain and simple, the price disclosure proposal is a kill message. Its intent is to inconvenience consumers in the hope that they will decide not to use OSPs the Commission deems objectionable.

As CompTel explained in its initial comments, the Commission's kill message proposal presents significant legal, public policy, and practical difficulties.¹⁰ The Commission certainly has power under the Communications Act to ensure that rates are just and reasonable, and, may adopt benchmarks and/or require the additional disclosure authorized by TOCSIA in order to do so. However, it may take these actions only upon proper record evidence demonstrating that the rate level at which the additional requirements

⁸ Ameritech Comments at 4; GTE Comments at 5; PacTel Comments at 2; Sprint Comments at 4-6; U S West Comments at 12. U S West recommends that the Commission adopt the Industry Coalition's proposal -- of which it is a sponsor -- but, if the Commission should reject that proposal, it supports price disclosure as an alternative. U S West Comments at 11-12.

⁹ These commenters' assessments of price disclosures are supported by a host of other parties as well. *See, e.g.*, AT&T Comments at 4 (price disclosure will saddle OSPs with higher costs and subject customers to significant inconvenience); Bell Atlantic *et al.* Comments at 3-4; SWBT Comments at 3; AMNEX Comments at 8; Intellicall Comments at 10-12.

¹⁰ CompTel Comments at 4-15.

apply is a rate that is unjust or unreasonable.¹¹ Because the Commission does not have sufficient record evidence and has not made (and cannot make) an affirmative finding that rates above its benchmark are unreasonable, the price disclosure proposal in the *Second Further Notice* exceeds the Commission's statutory authority.

No commenter has submitted evidence supporting the 115% standard proposed in the *Second Further Notice*. There is no evidence upon which one could rationally base a conclusion that these rates are sufficient to recover OSP costs and expenses. Indeed, it is telling that Sprint, one of the three carriers whose rates the Commission has endorsed, cannot compete in the OSP market at those rates. As Sprint candidly explains in its comments, while it offers some customers the rates cited by the FCC, when Sprint competes in the OSP market, it does so as ASC Telecom, charging rates well in excess of the 115% standard proposed by the Commission.¹² Even AT&T has substantially increased its 0+ rates over the course of the last two years -- after the Industry Coalition began developing its proposed benchmark -- presumably in response to increased costs in obtaining aggregator presubscription contracts.¹³ These actions, by the very carriers whose rates the Commission

¹¹ See CompTel Comments at 4-11.

¹² Sprint Comments at 3-4. In fact, ASC Telecom's rates exceed the benchmark rates proposed by the Industry Coalition. See CompTel April 27, 1995 Reply Comments at 10-12 & Table 1, CC Docket No. 92-77.

¹³ See AMNEX Comments at 4 n.10. Since the fall of 1994, AT&T has increased its per minute rates from a range of \$0.21-0.34 to \$0.33-0.45, and increased many of its surcharges by 20% or more. See AT&T Tariff F.C.C. No. 27, pages 24-2 and 24-9.

endorses, are strong evidence that the Commission's proposed 115% benchmark is not consistent with typical costs in the OSP market.¹⁴

Rather than supporting the Commission's proposed benchmark, the record submitted previously and submitted in response to the *Second Further Notice* supports the Industry Coalition's benchmarks as the appropriate point at which to distinguish between reasonable OSP rates and OSP rates that appear to be unreasonable. All OSPs are classified by the Commission as nondominant carriers, and rightly so, for no OSP is able to control prices in the operator services market. Moreover, the comments in this docket demonstrate that OSP rates are the result of market forces in the OSP industry, and that carriers would be unable to recover their legitimate costs of doing business if they priced their services at the Commission's proposed benchmark.¹⁵ By contrast, the Industry Coalition benchmark is consistent with CompTel's informal survey of its OSP members' cost structures, and is consistent with the Commission's own analysis of OSP costs.¹⁶ Indeed, Sprint's ASC

¹⁴ Indeed, if the Commission actually intends to base its benchmark on the Big Three's rates, it must significantly increase the benchmarks in order to account for Sprint's ASC Telecom rates.

¹⁵ See, e.g., One Call Comments at 7 (15% price margin does not accurately reflect cost differences); CCI Comments at 15 (15% margin is not sufficient "to maintain the existing level of payphone service"); cf. Sprint Comments at 3 (Sprint created ASC Telecom in order to "respond[] to the existing regulatory and market environment").

¹⁶ CompTel Comments at 15; Final Report of the FCC Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990, at 18 (Nov. 13, 1992) (finding that OSP expenses were over 94 percent of revenues, and OSPs "were not earning extraordinary profits"); see also Cleartel/Conquest Comments at 11 (Coalition benchmarks "are reasonable, market-based levels that are consistent with the existing structure of the competitive OSP industry").

Telecom experience confirms that competition in the OSP market requires rates much closer to the Industry Coalition benchmark than the FCC benchmark.

Finally, several commenters echo the FCC's tentative conclusion that the 115% benchmark is consistent with their conception of "consumer expectations." However, as CompTel has shown, consumers can and do expect to pay rates significantly above the FCC proposed benchmark for a number of call options available when they cannot dial 1+ calls from their homes or offices.¹⁷ Whether it is by using a cellular telephone, dialing direct from a hotel, asking AT&T operators to dial a call, or by using a presubscribed OSP, consumers regularly pay rates which exceed the rates the Commission apparently believes that consumers expect. Indeed, as Oncor notes, because consumer expectations is such a vague and uncertain concept, "any attempt by the Commission to establish a rate 'benchmark' . . . based on a consumer expectation-based cap will be arbitrary and futile."¹⁸ Moreover, regardless of what level of rates consumers expect, consumer expectations is not a legitimate basis under the statute to engage in benchmark ratemaking.¹⁹ Accordingly, the Commission cannot adopt its consumer expectations-based benchmark proposal.

¹⁷ See Ex parte Presentation of the Competitive Telecommunications Association, CC Docket No. 92-77 (June 22, 1995) (attached as Attachment 1 to CompTel's comments in response to the *Second Further Notice*).

¹⁸ Oncor Comments at 6.

¹⁹ CompTel Comments at 11-14.

II. THE COMMISSION SHOULD EITHER ADOPT THE COALITION RATE BENCHMARKS OR IMPLEMENT A PERMISSIBLE DISCLOSURE FOR ALL 0+ CALLS

The Commission's statutory and constitutional authority, coupled with the record before it in this proceeding, leave the Commission with only two options. On the one hand, it could establish benchmarks at the level proposed by the Industry Coalition. These benchmarks are the only levels supported by record evidence as being reasonable in relationship to most OSPs' costs, are most consistent with consumers' away from home calling options, and appear likely to eliminate the vast majority of consumer informal complaints regarding OSP rates. If the Commission adopts the Coalition benchmarks, it may either employ the Coalition's rate ceiling approach, or it may use these levels to trigger an additional disclosure consistent with TOCSIA's requirements.

In the alternative, the Commission may apply an even-handed disclosure requirement, again consistent with its authority under TOCSIA, to all OSPs, for all 0+ calls. Only if a disclosure is accurate, non-judgmental, and non-misleading can a disclosure requirement serve legitimate consumer protection or consumer information goals.²⁰

III. THE CONTENT OF THE COMMISSION'S PROPOSED DISCLOSURE IS UNREASONABLE AND UNLAWFUL

In its initial comments on the *Second Further Notice*, CompTel explained that requiring OSPs to quote an exact rate on each call was impractical and beyond the

²⁰ As CompTel explained in its initial comments, unless a disclosure is applied to all OSPs, consumers are not likely to have an appropriate reference point against which to compare a quoted rate. CompTel Comments at 20.

Commission's authority under Section 226(h) of the Communications Act, as amended by TOCSIA.²¹ The comments confirm CompTel's position.

First, most OSPs are not able to provide real-time rating of 0+ calls without incurring substantial reconfiguration costs. OSPs using store and forward technology within a payphone are unable to do it.²² Existing methods of monitoring 1+ sent-paid calls cannot be adapted to provide real-time rating for 0+ calls.²³ In addition, it simply is much more economical for OSPs to add rates to call records in the billing process, often days or weeks after the call is completed.²⁴ It appears that, most likely, OSPs required to give exact rates on every call will be forced to default all calls to a live operator, significantly increasing OSP costs and casting aside over a decade of automated technology.²⁵

Second, even a disclosure that required OSPs to state a maximum or "average" rate would be problematic. Such a disclosure still would increase dialing delay and inconvenience callers. In fact, given that the OSP likely would have to provide additional explanation to go along with a quote of maximum or average rates, this option is likely to lead to more delay than an exact rate quote. Further, only in rare circumstances will a customer be charged the exact rate quoted when a maximum or average rate is quoted.²⁶ This could be confusing to

²¹ CompTel Comments at 17-20.

²² Intellicall Comments at 7-10.

²³ *Id.* at 10-11.

²⁴ GTE Comments at 7; SWBT Comments at 3.

²⁵ *See* MCI Comments at 3.

²⁶ *See* AMNEX Comments at 8 n.22; Cleartel/Conquest Comments at 15.

callers, who would hear a rate quoted, but still would be unsure what they will be charged. Moreover, quoting a maximum rate would be misleading because consumers are unlikely to pay the maximum on all but a few calls.

Third, collect and third party billed calls present additional delay, as an OSP may end up giving the rate quote twice on the same call.²⁷

These types of practical problems are eliminated, however, if the Commission stays within its statutory authority under TOCSIA. TOCSIA allows for a simple, yet effective, additional disclosure in appropriate circumstances.²⁸ Informing consumers that "Our rates are available upon request," gives consumers notice that they may obtain this information if they wish, and imposes few additional costs on OSPs. Accordingly, if any disclosure requirement is adopted, the Commission should require only that OSPs inform consumers that rates are available upon request.

IV. BILLED PARTY PREFERENCE SHOULD BE REJECTED

A substantial number of commenters agree with CompTel that the record conclusively establishes that billed party preference is not in the public interest.²⁹ As SWBT explained, although it supported BPP until very recently, "[T]he time has passed for implementation of

²⁷ CompTel Comments at 20.

²⁸ 47 U.S.C. § 226(h).

²⁹ APCC Comments at 12; Bell Atlantic *et al.* Comments at 9; SWBT Comments at 1; PacTel Comments at 1-2; USLD Comments at 4; CCI Comments at 3-4; Cleartel/Conquest Comments at 1; One Call Comments at 1; TRA Comments at 2-3.

this service."³⁰ Significantly, the comments demonstrate that local number portability, when implemented, will have no effect on the costs of BPP.³¹ It is time, therefore, to abandon BPP, once and for all.

CONCLUSION

The Commission has thoroughly examined the costs and benefits of billed party preference, and the record clearly demonstrates that BPP is not in the public interest. Therefore, the Commission correctly has concluded it should adopt an alternative to BPP. The FCC's proposed price disclosure alternative exceeds its statutory authority and is unsupportable from a practical and public policy perspective. Accordingly, the Commission should reject its proposed alternative to BPP. Instead, it either should adopt benchmarks at the levels proposed by the Industry Coalition or it should mandate a disclosure consistent

³⁰ SWBT Comments at 1.

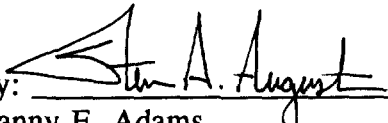
³¹ Bell Atlantic *et al.* Comments at 9; U S West Comments at 13; Ameritech Comments at 2; PacTel Comments at 2 n.1.

with TOCSIA for all 0+ calls. The Commission should adopt one of these options and close this docket as promptly as possible.

Respectfully submitted,

**THE COMPETITIVE
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